



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Morey Machinery, Inc.

File: B-225367

Date: December 12, 1986

DIGEST

1. Where an invitation for bids requires the submission of descriptive literature to establish conformance with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature submitted does not address, or evidences nonconformity with, the specifications.
2. The inadequacy of submitted descriptive literature may not be cured after bid opening by the submission of additional information to make the bid responsive, even if requested by the agency, since responsiveness, as distinguished from responsibility, must be determined on the basis of the bid as submitted.

DECISION

Morey Machinery, Inc., protests the rejection of its bid as nonresponsive and the award of a contract to Productive Machine Tool Company under invitation for bids (IFB) No. DAAC01-86-B-0070, issued by Anniston Army Depot, Alabama, for a boring and milling machine. The Army rejected the bid for lack of all necessary descriptive literature. Morey argues that the solicitation specifically permitted the consideration of additional descriptive literature after bid opening when requested by the Army, and that based on all its submissions, Morey was the low responsive, responsible bidder.

We deny the protest.

Section C of the IFB set forth certain specifications that the offered equipment had to meet, and section M-4 stated that bidders were required to submit descriptive literature with their bids to demonstrate compliance, particularly with

037609

seven of those specifications. Bidders were advised that the literature would be used for technical evaluation, and were cautioned that the failure of descriptive literature to show compliance would require rejection of the bid. Section M-2 stated that the Army might require bidders to furnish information as to technical, financial and production ability to perform any contract resulting from the solicitation.

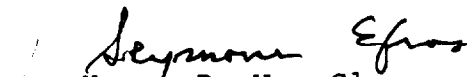
Bids were opened on May 6, 1986. Morey was the low bidder at \$458,648. Productive was the second low bidder at \$468,980. On July 11, the Army determined that Morey's descriptive literature did not address three requirements of the IFB and failed to show conformance with four others, all of which were specifically noted in section M-4. On July 17 and 21, the Army contacted Morey and requested clarification of certain items. Morey responded by furnishing additional technical literature on July 23, and the Army reevaluated Morey's bid as technically responsive. However, after reconsidering its decision in light of a legal determination that the material received from Morey should not be considered for purposes of bid responsiveness, on September 17 the Army informed Morey that the bid as submitted was nonresponsive since the technical literature furnished with it failed to address 10 of the IFB's critical areas. Morey protested to the agency on September 25, followed by a timely protest to our Office on October 14.

A bid is responsive when it represents an unequivocal offer to provide the requested items in conformance with the material terms of an IFB. Zero Manufacturing Co., B-210123.2, Apr. 15, 1983, 83-1 C.P.D. ¶ 416. Responsiveness must be determined at the time of bid opening and, in general, solely from the face of the bid and material submitted with the bid. Where, as here, descriptive literature is required to establish conformance with the specifications, and bidders are cautioned that nonconformance will cause the bid's rejection, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product complies with the specifications. Id.

Morey does not dispute that its bid as originally submitted did not establish conformance with the specifications; rather, it argues that section M-2, which states that the Army may require bidders to furnish information as to technical, financial and production ability to perform the contract, permitted the Army to consider additional descriptive literature after bid opening. Section M-2, however, has nothing to do with the responsiveness of a bid. That section provides that the agency may ask for data that bears on bidder responsibility, that is, the apparent ability and

capacity of a bidder to perform the contract. While matters bearing on a bidder's responsibility may be addressed after bid opening, the responsiveness of a bid, the issue here, must be determined on the basis of the bid as submitted. Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 C.P.D. ¶ 428. To allow a bidder to make its nonresponsive bid responsive after bid opening--which occurred in this case, although the Army corrected its error before improperly awarding the contract--is tantamount to allowing the bidder to submit a new bid. Emerson Electric Co., B-221827.2, June 4, 1986, 86-1 C.P.D. ¶ 521.

The protest is denied.


for Harry R. Van Cleve
General Counsel